

EXHIBIT 38

Filed Under Seal

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Civil Action No. 0:18-cv-01776-JRT-HB

IN RE:

PORK ANTITRUST LITIGATION,

_____ /

DEPOSITION OF
HAL SINGER

Friday, June 24, 2022
9:39 a.m. - 6:03 p.m.

Remote Location
Via Zoom Videoconference
All Parties Remote

Stenographically Reported By:
Erica Field, FPR

1 coordination that was done on an explicit
2 basis, right?

3 A. The allegation by plaintiffs is
4 that there was a price-fixing conspiracy that
5 involved the sharing of competitively
6 sensitive information through Agri Stats,
7 and, you know, if you go into the complaint,
8 they'll talk about how that agreement touched
9 many aspects of the conduct of the firms at
10 issue and how they were able to achieve a
11 reduction in output in a coordinated way.

12 But I think that the centerpiece,
13 at least as I understand it and the way that
14 I've written up my report, is the information
15 exchange -- antitrust competitive information
16 exchange.

17 Q. Okay. So there was an agreement
18 to exchange information through Agri Stats,
19 right?

20 A. Well, as alleged in the complaint.
21 You know, I'm loathed to tell you that there
22 was an agreement. Whenever you ask me today
23 about whether there was an agreement, I'm
24 going to tell you that it is alleged.

25 Q. Well, let's come back -- you used

1 "challenged conduct" maybe dozens of times in
2 your report, and I want a definition of what
3 you meant by it.

4 So is your -- your answer is just
5 whatever happened to be in the complaint, or
6 does challenged conduct actually mean
7 something specific to you?

8 A. It means -- it means something --
9 well, I don't know if those are -- it could
10 be both, right. But I give you my best
11 understanding of the challenged conduct in
12 Paragraph 2. And so I can't do any better
13 than that here, and I've tried to paraphrase
14 what's in Paragraph 2.

15 And that's my -- that's my
16 understanding of the challenged conduct.
17 It's a price -- an alleged price-fixing
18 conspiracy.

19 Q. Well, let's step back for a
20 minute.

21 So an agreement, a conspiracy,
22 whatever, an exchange of information, is that
23 a per se violation in and of itself?

24 MR. RISSMAN: Objection. That
25 calls for a legal conclusion.

1 A. Yeah. I don't think that you want
2 to come to me for that as to how this is
3 going to be adjudicated. I mean, I feel like
4 that's ultimately going to be the Court's
5 decision as to whether or not to apply the
6 per se -- or rule of reason standard.

7 BY MR. COLEMAN:

8 Q. Is -- in your mind, is everything
9 you define as challenged conduct unlawful?

10 MR. RISSMAN: Object to form.

11 And calls for a legal conclusion.

12 A. Right. I don't have any opinions
13 with respect to what -- what is unlawful. I
14 have opinions as to whether or not the
15 conduct was anticompetitive. I can answer
16 that question, but I can't -- I can't go into
17 areas of law.

18 BY MR. COLEMAN:

19 Q. And -- well, answer that question,
20 then.

21 Is all of the challenged conduct
22 anticompetitive in economic terms?

23 A. Oh, I concluded that the
24 challenged conduct was anticompetitive using
25 both my qualitative assessment and my

1 quantitative methods, yes.

2 Q. Does challenged conduct include
3 increasing -- defendants increasing exports
4 of pork products?

5 A. Well, if you go into the
6 complaint, you will find allegations that the
7 agreement implicated the defendants' decision
8 making with respect to exports, and there
9 were, in fact, in the record episodes of
10 coordination on the decision of how much to
11 export.

12 But I don't consider exporting to
13 be a restraint that is being challenged in
14 the case. In other words, my mandate was to
15 remove the challenged conduct, which I
16 interrupted to mean the centerpiece was this
17 price-fixing conspiracy held together by
18 information exchange.

19 In other words, no one -- no one
20 said, Dr. Singer, I want you to assume that
21 exporting is zero in the but-for world. No
22 one asked me to treat exporting as if it were
23 a restraint.

24 Now, exporting would likely fall
25 in the but-for world as you remove the

1 challenged conduct. But I don't consider
2 exporting to be a restraint that I should
3 remove when modeling the but-for world.

4 Q. Yeah. So it -- just so the record
5 is clear, the but-for world is the world in
6 which there was no conspiracy or challenged
7 conduct, right?

8 A. Correct.

9 Q. So in the but-for world, we assume
10 away any unlawful coordination or any
11 challenged conduct, right?

12 A. That's fair.

13 Q. And so at least as to exports, do
14 you have an opinion in that but-for world
15 whether exports would have stayed flat or
16 would have increased?

17 A. So what I've -- what I've
18 quantified is the extent to which domestic
19 production would be -- would have been
20 greater in the but-for world absent the
21 challenged conduct.

22 What I have not done is said where
23 would that come from. Would it necessarily
24 come from exports, or would it be new supply.
25 I haven't -- I haven't -- I haven't said

1 MR. RISSMAN: Objection.

2 A. I think the complaint alleges that
3 the agreement touched the decision making
4 with respect to liquidation. But -- and I
5 said -- I will say the same thing for
6 liquidation that I said for exporting.

7 I'm not removing liquidation in
8 the but-for world. Right. I do not set
9 liquidation to zero in the but-for world and
10 then solve for the price fix. I do not set
11 exporting to zero in the but-for world. It
12 is not a restraint along the lines of the
13 restraint that I have removed, which is the
14 sharing of competitively sensitive
15 information among the defendants via
16 Agri Stats.

17 So just to put a bow on this,
18 there will be some liquidation in the but-for
19 world. There will be some exporting in the
20 but-for world. It's not a restraint to be
21 eliminated in the but-for world when I said
22 about modeling the but-for world and the
23 challenged conduct.

24 BY MR. COLEMAN:

25 Q. So how much would sows -- the sow

1 herd have been reduced in the but-for world?

2 MR. RISSMAN: I'm going to
3 instruct the witness that if he hasn't
4 formed an opinion on that, he
5 shouldn't answer.

6 BY MR. COLEMAN:

7 Q. Let's set that as a precursor.

8 Did you form an opinion on how
9 much the sow herd would have been reduced in
10 the but-for world?

11 A. I have not. I've estimated, like
12 I said, how much more domestic supply would
13 have occurred in the but-for world absent the
14 alleged conspiracy, and I have not performed
15 a decomposition as to how that output
16 increase would be achieved.

17 But I think it's reasonable to
18 infer that it would be achieved through some
19 combination of the mechanisms that were
20 employed by the defendants to reduce domestic
21 output.

22 Q. So just coming back to the basic
23 question as to whether or not you formed an
24 opinion about how much the sow herd would
25 have been reduced, if at all, in the but-for

1 world.

2 The answer is you did not form an
3 opinion on that subject; is that right?

4 A. Well, I want the record to be very
5 clear. I estimated with -- with great
6 precision, in my opinion, the extent of the
7 output reduction that could be attributed to
8 the challenged conduct. I have not performed
9 a decomposition of that output reduction
10 according to the three primary mechanisms the
11 defendants used to reduce domestic supply.

12 I have not done that. I don't
13 think such a decomposition is necessary, and
14 I will leave it at that.

15 Q. Well -- and I'm just a lawyer.
16 I'm not sure I understand what decomposition
17 is. I guess what I want to know is did your
18 model or any opinion that you formed in this
19 case allow you to assess whether sow herd
20 reductions would have occurred in the but-for
21 world?

22 A. Oh. The model doesn't tell us
23 that, but I think just economic insight
24 analysis and review of the qualitative
25 record, all the institutional details, is

1 agreed on price?

2 A. No, I don't know what --

3 MR. RISSMAN: Object to form.

4 A. I don't know what you mean by
5 "agreed," but to an economist if -- if an
6 information broker is exchanging
7 competitively sensitive information across to
8 defendants, and they utilize and rely on that
9 information to effectuate a price increase
10 that otherwise would not have been possible,
11 and that is an anticompetitive price effect.

12 Now, if you want to call it -- I
13 think -- what was the word that you were
14 trying to use -- agreement -- you know, I'm
15 not offering opinions on agreements. I'm
16 offering economic opinions. I will leave it
17 at that.

18 BY MR. COLEMAN:

19 Q. So when was the conspiracy formed?

20 A. Well, the complaint --

21 MR. RISSMAN: Object to form and
22 foundation.

23 A. The complaint -- can you give me
24 the question again?

25

1 BY MR. COLEMAN:

2 Q. When was the conspiracy formed?

3 MR. RISSMAN: Same objection.

4 A. The complaint asserts that the
5 conduct period began in 2009 with the release
6 of certain Agri Stats reports, and so that's
7 why I define the conduct variable in my model
8 to begin in 2009.

9 BY MR. COLEMAN:

10 Q. And is that why you treated 2008
11 as a preconspiracy benchmark year?

12 A. Yes.

13 Q. And so you understood that 2008
14 predated the conspiracy?

15 MR. RISSMAN: Object to form.

16 And calls for a legal conclusion.

17 BY MR. COLEMAN:

18 Q. Well, at least that's the
19 assumption.

20 MR. COLEMAN: I am sorry, Josh.

21 Yeah. Go ahead.

22 I apologize to the court
23 reporter, too.

24 Did you catch his objection?

25 THE STENOGRAPHER: Yes.

1 BY MR. COLEMAN:

2 Q. And so your model -- you can
3 strike the previous question.

4 Your model assumes that 2008 was a
5 preconspiracy year, right?

6 MR. RISSMAN: Object to form.

7 A. The model does treat 2008 as a
8 preconspiracy year. That is correct. And I
9 recognize that I've -- there is some evidence
10 in the record to suggest that Agri Stats had
11 already begun, at least through its marketing
12 campaign, to -- to move -- place the wheels
13 in motion to form this alleged conspiracy or
14 this cartel.

15 And to the extent that any prices
16 in 2008, which I've considered to be an edge
17 year, reflect the effects of that preliminary
18 coordination, then my benchmark -- my clean
19 benchmark will naturally produce a
20 conservative estimate of the price effect
21 owing to the conspiracy.

22 BY MR. COLEMAN:

23 Q. So you've mentioned that harvest
24 agreement was one of the mechanisms used to
25 reduce the domestic supply of pork.

1 could give you a very precise estimate of the
2 duration.

3 Q. And you are not aware of anything
4 stopping independent producers from expanding
5 their sow herd in response to cutbacks by
6 Smithfield or any other defendant, right?

7 MR. RISSMAN: I will instruct
8 the witness to answer to the extent he
9 has an opinion about that.

10 A. I don't have an opinion on that.

11 BY MR. COLEMAN:

12 Q. What's a gilt?

13 A. I think we have -- it's a female
14 pig that has -- is not ready to deliver
15 piglets or something like that.

16 Q. And do you know whether gilts are
17 capable of becoming sows?

18 A. Are they incapable?

19 Q. Capable.

20 A. I think eventually they might be
21 capable, but I think that that is the word to
22 describe them at a certain stage of their
23 lives.

24 Q. You don't know how long it takes
25 for a gilt to become a sow or capable of

1 becoming a sow?

2 A. I've -- I've read that -- I've
3 read that, I'm sure, in putting together the
4 background section, but I can't give you that
5 statistic off the top of my head.

6 Q. Do you know anything about
7 Smithfield's inventory or Tyson's inventory
8 of gilts on their farms when they liquidated
9 sows?

10 A. Sitting here, no, I can't give you
11 a characterization of that.

12 Q. Do you know anything about
13 circovirus?

14 A. No, I've studied other viruses.
15 But circo virus?

16 Q. Circovirus?

17 A. Oh, circovirus. I looked at two
18 other viruses, but not circo, I don't think.

19 Q. Do you know whether circovirus and
20 the vaccine to reduce or eliminate circovirus
21 had any impact on supply during the relevant
22 time period?

23 A. No, but to the extent that it
24 affected the pig mortality rate, it would be
25 controlled for in my pig mortality variable,

1 but I don't know enough about that virus.

2 Q. You understand that pig diseases
3 can have significant impacts on the supply of
4 hogs and ultimately the supply of pork,
5 right?

6 A. Correct.

7 Q. Could you turn to Tab 62?

8 MR. RISSMAN: Give me just a
9 second because it's in the back of
10 this.

11 MR. COLEMAN: I had the same
12 problem. The binder is it too big.

13 Jacob, you could go ahead and
14 call it up on the screen.

15 BY MR. COLEMAN:

16 Q. Are you with me?

17 A. Yes.

18 Q. And what's been marked as
19 Exhibit 3 is a USDA report with the title
20 "Users Guide to USDA's LMR Hog Price
21 Reports," right?

22 (Exhibit 3 was marked for
23 identification.)

24 A. Yes.

25 BY MR. COLEMAN:

1 the -- during the conduct period. It is
2 telling us what the effect is across the
3 entirety of the conduct period. So I will
4 leave it that.

5 Q. And can your model tell us the
6 amount of overcharge in any particular time
7 frame, like, say, a given month in a given
8 year at any point in the time period?

9 A. Well, you could -- using my model,
10 you could go make a prediction within a
11 particular month if you were very interested
12 in a particular month for some reason. You
13 could make a prediction of what the prices
14 would have been in the absence of the
15 challenged conduct, and you can compare those
16 prices to the actual prices, if you were so
17 inclined.

18 Now, there's no apriority reason
19 to do that given that the allegations are for
20 an alleged conspiracy that spanned from 2009
21 to 2018. So number one, you wouldn't be
22 testing the theory of the case, the theory of
23 harm.

24 And number two, I haven't seen any
25 -- I'm not aware of any record evidence that

1 would suggest that we should go looking for a
2 structural break in January of 2010; that is,
3 there's no suggestion that the information
4 exchange was any more or less wholesome in
5 January of 2010.

6 The information exchange of
7 competitively sensitive information was the
8 same across the challenged conduct -- across
9 the conduct period.

10 Q. Do you know whether every
11 defendant subscribed to all the Agri Stats
12 report throughout the time period?

13 A. I got a chart that shows you which
14 ones each defendant subscribed to in each
15 year. But, you know, I know you want this to
16 be a memorization test, but I can't tell you
17 which boxes are checked by memory. We can go
18 to the table.

19 Q. Coming back to 151 and beta one in
20 that line of questioning, so does it mean --
21 is it your opinion that, for example, the
22 direct purchasers of class products paid a
23 12.8 percent overcharge in every month from
24 January of 2009 to June of 2018?

25 A. I think that the model I've

1 constructed, which constrains the parameter
2 to be the same across the challenged conduct
3 period -- the conduct period would suggest
4 that it was the same overcharge in each
5 month. That's correct.

6 Q. So in each incremental month from
7 January 1, 2009, through the end of the
8 conspiracy period, it's your opinion that
9 there was an overcharge of a specified
10 amount.

11 Here it's 12.8 percent for direct
12 purchasers of class products?

13 A. I can conceive -- I think that in
14 reality that the inflation likely varied
15 slightly over time, but this model and this
16 specification, which constrains the parameter
17 to be the same across the entirety of the
18 conduct period, the best prediction that I
19 would have for your favorite month, which is
20 January 2010, would be the parameter is
21 estimated.

22 Q. So does it mean that -- it's not
23 my favorite month. I'm just picking that as
24 an example, just to have a point of
25 reference.

1 But is your testimony -- your
2 opinion mean that regardless of the specific
3 actions that defendants took, your model
4 assumes that the alleged conspiracy had the
5 same effect in every month?

6 A. No, that's not -- that's not what
7 it means. The model as constructed here is
8 seeking to estimate an effect that stretched
9 over the entirety of the challenged conduct
10 for the conduct period. The plants are not
11 asserting a sequence of mini conspiracies,
12 you know, lasting one month apiece.

13 If they were, if that were the
14 allegation, you know, we could go out and
15 test for differential effects by month, but
16 they're not. They're alleging a single
17 conspiracy that spanned the duration of the
18 conduct period, and I will leave it at that.

19 Q. But the levers of the conspiracy
20 are multifaceted and -- whether it's exports
21 or sow reductions or something else?

22 A. Or price hikes -- or price hikes,
23 yes.

24 Q. Sure. And so is it your opinion
25 that regardless of what levers were pulled at